

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMPLIFY EDUCATION, INC.,

Plaintiff/Counterclaim Defendant,

v.

GREENWOOD PUBLISHING GROUP, INC.
d/b/a HEINEMANN,

Defendant/Counterclaim Plaintiff.

Civil Action No. 1:13-cv-02687-LTS

JURY TRIAL DEMANDED

AMPLIFY’S INFRINGEMENT CONTENTIONS

Plaintiff/Counterclaim Defendant Amplify Education, Inc. (“Amplify”) provides the following Infringement Contentions against Defendant/Counterclaim Plaintiff Greenwood Publishing Group, Inc. d/b/a Heinemann (“Heinemann”), pursuant to Southern District of New York Local Patent Rule (“SDNYLPR”) 6 and Northern District of California Local Patent Rule (“NDCLPR”) 3-1, as required by Paragraph 4 of the Court’s Pre-Trial Scheduling Order (Dkt. No. 18). Amplify reserves the right to supplement or amend its responses herein pursuant to Federal Rule of Civil Procedure 26 and SDNYLPR 9 and based on any material located during the course of discovery, including any information produced by Heinemann.

PRELIMINARY STATEMENT

Amplify's investigation into the extent of infringement by Heinemann is in an early stage. These infringement contentions are based solely on information currently available to Amplify. Discovery is in an early stage and Heinemann has not yet produced documents or source code for the Accused Instrumentalities, which may contain relevant details as to Amplify's contentions. Therefore, Amplify reserves the right to supplement or modify its contentions as new information, through party or third-party discovery or otherwise, becomes available.

I. DISCLOSURE OF ASSERTED CLAIMS AND INFRINGEMENT CONTENTIONS [NDCLPR 3-1]

A. Asserted Claims [NDCLPR 3-1(a)]

Based on information currently available to Amplify, Amplify alleges that Heinemann has infringed and are infringing at least the following claims ("Asserted Claims") of the following patents:

U.S. Patent No. 7,114,126 ("the '126 patent"): claims 1-39

U.S. Patent No. 7,568,160 ("the '160 patent"): claims 1-27

B. Accused Instrumentalities [NDCLPR 3-1(b)]

Based on information currently available to Amplify, Amplify alleges that the accused instrumentalities for the '126 and '160 patents are Heinemann's Fountas & Pinnell's Reading Record Apps, including the Fountas & Pinnell Benchmark Assessment Reading Record App and the Fountas & Pinnell Leveled Literacy Reading Record App.

C. Infringement Claim Charts [NDCLPR 3-1(c)]

The claim charts attached as Exhibits A and B (for the '126 and '160 patents, respectively) identify where each element of each Asserted Claim is found within each of the Accused Instrumentalities, based on information currently available to Amplify.

D. Indirect Infringement [NDCLPR 3-1(d)]

Based on information currently available to Amplify, Heinemann directly infringes each element of each Asserted Claim of the '126 and '160 patents by making, using, offering to sell, and selling the Accused Instrumentalities, including without limitation through the operation of the BAS or LLI Online Data Management System (ODMS). Heinemann designs and sells products that, when implemented in the manner consistent with their design, infringe all Asserted Claims. *See* Exhibits A-B.

To the extent that Heinemann does not directly infringe any of the Asserted Claims, discovery may reveal that Heinemann contributes to and/or induces infringement of these claims. The Accused Instrumentalities are used in practicing the '126 and '160 patents, constitute a material part of the inventions of the '126 and '160 patents, and have no substantial non-infringing uses. Discovery also may reveal that Heinemann teaches potential users how to utilize the Accused Instrumentalities in an infringing manner through help files and video tutorials, with the specific intent that such users commit infringement of Amplify's claims. *See, e.g.,* <http://www.heinemann.com/apps/help.aspx>. When Heinemann's customers use the Accused Instrumentalities as intended they directly infringe the Asserted Claims. Heinemann thus would contribute to and induce customers and users of the Accused Instrumentalities to directly infringe the Asserted Claims.

E. Literal and DOE Infringement [NDCLPR 3-1(e)]

Based on information currently available to Amplify, each element of each Asserted Claims is present literally in the Accused Instrumentalities. To the extent any claim construction results in the Accused Instrumentalities falling outside the literal scope of any Asserted Claims, Amplify reserves the right to contend that the Accused Instrumentalities infringe under the doctrine of equivalents.

F. Priority Date for the Asserted Claims [NDCLPR 3-1(f)]

The '126 and '160 patents claim priority to U.S. Provisional Application No. 60/305,887, filed on July 18, 2001, therefore the Asserted Claims are entitled to a priority date of no later than July 18, 2001.

G. Amplify's Products Covered by the Asserted Claims [NDCLPR 3-1(g)]

Amplify's mCLASS:Reading 3D product practices, incorporates, or reflects one or more of the Asserted Claims of each of the '126 and '160 patents.

II. DOCUMENT PRODUCTION ACCOMPANYING DISCLOSURE [NDCLPR 3-2]

Amplify has produced documents it has identified based on its reasonable investigation to date. Amplify is continuing its search for responsive documents and reserves the right to supplement this production. If Amplify should subsequently identify any additional documents required under NDCLPR 3-2, it will promptly produce such documents to Heinemann. Should they exist, Amplify reserves the right to rely on any such subsequently identified and produced documents.

Further, pursuant to NDCLPR 3-2, Amplify identifies representative documents from its document production as follows:

- NDCLPR 3-2(b) Documents: Bates Nos. AMP000001-AMP000130
- NDCLPR 3-2(c) Documents: Bates Nos. AMP000131-AMP000699
- NDCLPR 3-2(d) Documents: Bates Nos. AMP000700-AMP000712
- NDCLPR 3-2(e) Documents: Bates Nos. AMP000713-AMP001536

Dated: December 24, 2013

Respectfully submitted,

FISH & RICHARDSON P.C.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Infringement Contentions were served on the following individuals via electronic mail and Federal Express on December 24, 2013:

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Dated: December 24, 2013

/s/ Loreyls M. Perez
